United Nations S/AC.37/2002/8

Security Council

Distr.: General
16 April 2002
English
Original: French

Security Council Committee established pursuant to resolution 1267 (1999)

Note verbale dated 15 April 2002 from the Permanent Mission of Algeria to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Algeria to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) and, with reference to the Committee's note dated 7 March 2002, has the honour to transmit to him herewith the report of the People's Democratic Republic of Algeria submitted in accordance with resolution 1390 (2002).

02-34355 (E) 300502 030602

Report of Algeria on the implementation of resolution 1390 (2002) adopted by the Security Council on 16 January 2002

Contents

		Page
I.	Introduction	3
II.	Legal framework for suppressing the financing of terrorism	4
	1. Financing of terrorism: a criminal offence punishable by law	4
	2. Fund-raising	5
	3. Protective measures for the freezing or attachment of financial assets linked to terrorist activities	5
	4. Regulation of capital transfers into and out of Algeria	6
III.	Bodies responsible for the suppression of the financing of terrorism	7
IV.	Movement of people, and measures taken to prevent the entry or transit of the persons referred to in Security Council resolution 1390 (2002)	8
V.	Supply and sale of arms	9
VI.	Conclusion	10

I. Introduction

The Algerian Government submits the present report to the Security Council Committee established pursuant to resolution 1267 (1999) in accordance with resolution 1390 (2002) adopted by the Security Council on 16 January 2002. The report provides an overview of the existing legal framework for suppressing the financing of terrorist activities; the legislative and regulatory measures that are currently being drawn up; and the mechanism which Algeria has put in place to process financial intelligence.

As a victim of terrorism, Algeria welcomes the clear commitment which the community of nations is now making to waging a comprehensive and determined war against transnational terrorism. Algeria is in the process of establishing the legislative and regulatory framework for suppressing the financing of terrorism together with appropriate judicial and institutional mechanisms in order to help strengthen international cooperation in this domain.

Algeria, which has ratified virtually all the United Nations anti-terrorism conventions, has embraced the full range of measures adopted by international bodies, particularly the Security Council, in the aftermath of the tragic events of 11 September. The urgent measures adopted at the global level and the commitment made by States to cooperate, in good faith, in order to combat the financing of terrorist networks and organizations should be effectively translated into action through a sustained effort to weaken the destructive capacities of terrorist organizations and dry up their sources of funding.

The facilities offered by certain banking institutions and the permissiveness of some countries' laws have greatly helped to increase financial flows towards terrorist groups and criminal organizations. The connection, which is increasingly acknowledged, between terrorism and organized crime makes international financial cooperation and the involvement of financial institutions and banking systems crucial to eradicating illegal practices.

In its report on the implementation of Security Council resolution 1373 (2001), contained in document S/2001/1280, Algeria provided an overview of the measures which it has implemented and intends to implement to prevent and combat terrorism. It clearly indicated that its fight against this transnational scourge is based on a legal arsenal which penalizes terrorist acts and suppresses all activities involving material or financial support for or the advocating or promotion of terrorism by any means whatever.

It is in this same context that Algeria undertakes to implement the provisions of Security Council resolution 1390 (2002) on the suppression of terrorist activities carried out by the Al-Qaida organization and its transnational network and to contribute fully to international cooperation aimed at thwarting this terrorist enterprise.

In the present report, and in conformity with paragraph 2 (a), (b) and (c) of Security Council resolution 1390 (2002) pertaining to measures effectively taken with respect to Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them, it is noteworthy that, given the workings of its banking system, the non-convertibility of its national currency for activities other than foreign trade, and the

exchange controls that are in force, Algeria does not provide a financial haven for Al-Qaida terrorist organizations.

Indeed, neither that organization nor those associated with it have any funds in public or private Algerian banks and the public authorities have thus far never needed to order the freezing or attachment of any assets belonging to them.

With regard to specific legislation to combat the financing of terrorism and money-laundering, Algeria is endeavouring to strengthen its legal arsenal with appropriate legislative provisions. The latter will cover the measures envisaged by the relevant Security Council resolutions, including resolution 1390 (2002), as well as the Special Recommendations of the Financial Action Task Force on Money-laundering (FATF) and the International Monetary Fund (IMF) which relate, inter alia, to the establishment of a unit for the processing of financial intelligence.

Algeria has recently established an independent unit for that purpose, which will be provided with the requisite resources to discharge its functions in a manner consistent with its international obligations.

Algeria is progressively incorporating into its legislation a series of measures connected with its global fight against international terrorism, particularly since two Algerian terrorist organizations, the Armed Islamic Group and the Salafist Group for Proselytization and Combat, are members of Al-Qaida.

II. Legal framework for suppressing the financing of terrorism

1. The financing of terrorism: a criminal offence punishable by law

Algeria has been taking legislative measures to suppress the financing of terrorism since 1995. Algerian law punishes the financing of terrorist activities and imposes severe penalties against any person found guilty of raising funds for terrorist or subversive ends. Ordinance No. 66.156 enacting the Penal Code, as amended and supplemented by Act No. 01.09 of 26 June 2001, and Ordinance No. 95.11 of 25 February 1995 constitute the appropriate legal framework for suppressing the financing of terrorism. Both texts outlaw the financing of such activities, which they designate as a subversive and criminal act.

Articles 87 and 87 bis of Ordinance No. 95.11 of 25 February 1995 penalize terrorist acts as acts that target State authority, public order, persons or property for subversive ends. Any activity associated therewith, including the provision of financial and material assistance, falls within the scope of application of this Ordinance.

Article 87 bis of the aforementioned Ordinance reads as follows: "Any person who advocates, encourages or finances terrorist acts by any means whatever shall be liable to a term of between 5 and 10 years' imprisonment and a fine of from DA 100,000 to DA 500,000". These penalties apply without distinction to nationals and aliens and to individuals and bodies corporate found guilty of this offence.

The guilty party may also be sentenced to forfeit some of his civil rights stipulated in article 14 of the Penal Code for a period of between one and five years. Articles 42, 43 and 44 of the Code specify additional penalties in cases of aiding and abetting.

Under article 387 of the Penal Code, any person found guilty of possessing property or financial assets proved to be the product of receiving stolen goods or larceny or to have been obtained by means of a crime or misdemeanour is liable to a penalty of between one and five years' imprisonment. Likewise, article 388 states that anyone found guilty of receiving stolen goods faces a penalty of imprisonment.

2. Fund-raising

Legally established groups or associations pursuing activities recognized as serving the public interest may raise funds under the conditions set forth in clear and transparent regulations. Only the administrative authority with territorial jurisdiction may authorize fund-raising in previously identified structures and in clearly defined circumstances. Fund-raising and solicitation in State administrative and public offices are strictly forbidden.

According to Ordinance No. 77.03 of 19 February 1977, prior authorization by the competent administrative authority is required for public fund-raising. State-approved associations must apply to the competent body, in writing, indicating the reasons for and objectives of the fund-raising and the identity of the persons designated to carry it out. The permit that has been issued must be presented to the persons in charge of the structure concerned and the amounts collected are made public.

Any violation of the provisions of this Ordinance is punishable, depending on the circumstances, by a term of between one month and two years' imprisonment.

Ordinance No. 95.11 of 25 February 1995, as supplemented by Ordinance No. 97.03 of 19 February 1997 concerning the unlawful use of funds raised by charitable organizations, extends the penalties to any person presumed guilty of using the returns from fund-raising to finance terrorist activities.

Deposits and other financial assets held by aliens and non-residents in Algerian banks are subject to Algeria's currency, credit and investment laws and require the prior approval of the Bank of Algeria. Ordinance No. 96.22 of 9 July 1996, concerning the punishment of offences against the exchange laws and regulations, specifies a penalty of imprisonment and a fine for any breach of the applicable legal procedures.

3. Protective measures for the freezing or attachment of financial assets linked to terrorist activities

Various provisions of the Penal Code, the Code of Criminal Procedure and other laws concerned with preventing and combating terrorism provide for the application of measures to freeze assets and funds linked to terrorist and subversive activities. Where there is evidence of support for and financing of terrorist activities, the courts seized of the matter order freezing, attachment or confiscation measures and criminal proceedings are instituted with a view to suppressing the financing and punishing the guilty parties. This type of act is regarded as a crime within the meaning of article 87 bis of Ordinance No. 95.11 of 25 February 1995.

Article 47 of Ordinance No. 95.10 of 25 February 1995 accords the examining magistrate full powers to carry out, directly or through the competent members of the criminal investigation service, any search or seizure, by day or by night, in any

place throughout the national territory, in connection with actions and activities categorized as acts of terrorism.

The laws in force prescribe other protective measures which may be taken in any situation pertaining to the prevention and combating of terrorism on the basis of data, substantiating evidence or reliable information demonstrating or indicating the existence of links between capital and financial assets and terrorist activities.

Judicial procedures for the freezing or attachment of assets intended for the financing of terrorist activities also fall under the jurisdiction of the examining magistrate, in the context of preliminary inquiries and pre-trial proceedings, where there is evidence or suspicion that the financial assets under investigation are or were intended for the financing of terrorist activities or are derived from economic goods or resources that have been recycled by a process of money-laundering.

In such circumstances, the examining magistrate may order protective measures for the freezing or attachment of financial assets intended for terrorist activities and may also issue a confiscation order together with the additional penalties and security measures specified in articles 6, 9, 15, 25 and 87 bis 9 of the Penal Code.

The Bank of Algeria has the list of the organizations and individuals implicated in terrorist acts which was drawn up pursuant to the relevant Security Council resolutions. The law on money-laundering, which is being finalized, and the financial intelligence unit will offer the competent bodies the legal tools they need to take action, as required, to freeze or attach funds and assets belonging to these organizations which are held in or pass through the various banks and financial institutions operating in Algeria.

4. Regulation of capital transfers into and out of Algeria

The extension of the measures to control capital movements which the Bank of Algeria is empowered to carry out by Act No. 90.10 of 14 April 1990, as amended and supplemented by Ordinance No. 96.22 of 9 July 1996 concerning the punishment of violations of the legislation and regulations governing currency and capital movements into and out of the country, represents an additional tool for suppressing illegal transactions.

Exchange control is aimed at preventing and suppressing all fraudulent, illegal or fictitious operations. Systematic registration and retention of information and documentation on capital movements from and into Algeria greatly facilitates the traceability of such movements.

In order to guarantee the legality of these banking operations associated with foreign trade, the regulations stipulate that for import (other than service) and export operations and, more generally, all activities associated with foreign trade, payment by banker's order must be arranged in advance and the file must be reviewed on the basis of the regulatory substantiating documents.

Prior authorization by the Bank of Algeria is required for payment of non-associated service operations by banker's order.

The Bank of Algeria certifies any compensation repatriated in convertible currencies, including returns on investments. This also applies to the transfer of dividends or capital gains from assignments.

The Bank of Algeria continuously monitors, directly or through specially authorized intermediary banks and financial establishments, financial transactions carried out from or into Algeria. The prior approval of the Exchange and Credit Council is required to transfer capital abroad. In any case, only small quantities of convertible currency in the form of banknotes may be transferred abroad.

III. Bodies responsible for the suppression of the financing of terrorism

Algeria has recently established, by regulatory means, a financial intelligence unit. The mandate of this new body is to combat the financing of terrorism and money-laundering. To that end, its functions are as follows:

- To receive any reports submitted to it regarding suspected financing of terrorism or money-laundering;
- To use all appropriate means and methods to process such reports;
- To request from public and private bodies any documents or information which it might need and any other data required to discharge its responsibilities;
- To take preventive action by objecting to any operation of a suspicious nature;
- To order the freezing of assets proved to be of dubious origin;
- To submit to the courts for investigation any transaction associated with the financing of terrorist activities or money-laundering.

The envisaged strengthening, modification and harmonization of the Penal Code and banking law will qualitatively enhance repressive measures aimed at combating terrorism and money-laundering and, more generally, at gaining control over mechanisms and networks used for unlawful ends.

A law on money-laundering is being drafted, thereby serving to fill the conspicuous juridical void existing in this sphere and providing officers of the criminal investigation service and the competent courts with the legal and institutional means to carry out the requisite investigations into any suspicious operation.

In the meantime, the judicial authorities and criminal investigation service will conduct their work in accordance with Algeria's commitments under the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999 and the United Nations Convention against Transnational Organized Crime adopted at Palermo (Italy) in December 2000 and signed by Algeria in 2001. The entry into force of this important instrument and its incorporation into the national legal arsenal, in conformity with article 69 of the Constitution, endows ratified international treaties with a higher status than national laws.

The law on money-laundering will also make it possible to integrate the provisions of article 7 of the Convention, on measures to combat money-laundering, into national legislation.

The establishment of a national body with responsibility for the processing of financial intelligence, the surveillance of financial operations arising from illegal activities or financing fraudulent operations and the establishment of effective

international cooperation in the detection and surveillance of crossborder movements of money and negotiable securities will have the effect of discouraging the financing of terrorism and money-laundering.

With the law on money-laundering and the financial intelligence unit, Algeria will have the appropriate structures together with an arsenal of repressive measures to combat all forms of illegal financing of terrorism and money-laundering.

Algeria takes the view that measures for the freezing and attachment of funds and financial assets intended for the financing of terrorist activities in any place or by any person represent a crucial phase of the global fight against the terrorist phenomenon. Algeria's determination to help combat this scourge, which threatens international peace and security and the stability and development of nations, is based on its conviction that the clear political will of all States and joint efforts by national operational structures are the only way to put an end to terrorism and its networks.

IV. Movement of people, and measures taken to prevent the entry or transit of the persons referred to in Security Council resolution 1390 (2002)

Ordinance No. 66.211 of 21 July 1966 regulates the movement of people. This legislative text is modified and supplemented by the Penal Code, which addresses the security aspects of the entry, transit and stay of aliens in Algeria.

It is an offence punishable by law to stay in the country illegally. Where such stay is associated with terrorist or subversive activity, the offence is designated as a crime. Under article 87 bis of the Penal Code, recruitment for subversive and terrorist ends is prohibited. Accordingly, the establishment of associations and groups whose purpose is to carry out terrorist activities and support for or participation in the activities of such entities are severely punished by law. Article 87 bis 1 specifies a penalty of imprisonment in this regard.

Any alien who stays illegally in Algeria and takes part in terrorist activities is liable to punishment on two counts. In the judicial processing of cases, illegal stay and terrorist crime are regarded as aggravating factors.

The entry and stay of persons who are the subject of a judicial warrant in Algeria or abroad is closely monitored by the police. Persons who are being sought pursuant to an Interpol red notice on the basis of an international warrant or in conformity with paragraph 2 of Security Council resolution 1390 (2002) and/or under the terms of a sentence handed down by foreign judicial authorities are systematically questioned upon arrival at any national port or airport. Wanted persons are immediately handed over to the courts and charged.

The Directorate of National Security has the list that was drawn up and updated in accordance with Security Council resolutions 1267 (1999) and 1333 (2000). The Directorate has also been instructed to arrest persons suspected of belonging to the Al-Qaida networks or of having committed terrorist and subversive acts.

Algeria attaches great importance to the exchange of information between States and the national and international bodies and institutions competent to

monitor the movements of persons who are implicated in terrorist acts or have committed terrorist and subversive acts. Exchanges of information and intelligence help to prevent operations by terrorist groups and organizations and make it easier to interrogate and arrest them with a view to bringing them to justice.

V. Supply and sale of arms

Act No. 01.09 of 26 June 2001, enacting the Penal Code, stipulates penalties of imprisonment for any illegal possession of firearms. The Act clearly specifies the conditions under which individuals and legal entities are authorized to bear or possess different categories of weapon. It also punishes persons who breach or have deliberately violated their contractual obligations in this regard.

Article 87 bis 7 of the amended and supplemented Penal Code specifies the following penalties for offences relating to the acquisition, possession and manufacture of weapons, ammunition and explosives:

- Any person who possesses, conceals, carries, sells, imports, exports, manufactures, repairs or utilizes prohibited weapons or ammunition without authorization from the competent authority is liable to a term of 10 to 20 years' imprisonment and a fine of between DA 500,000 and 1,000,000;
- Where the offence involves the use of explosive substances or any other material forming part or used in the manufacture thereof, the death penalty is required;
- Offences associated with the sale, purchase, distribution, import or manufacture of knives for unlawful ends are punishable by 5 to 10 years' imprisonment and a fine of DA 100,000 to 500,000.

In addition, articles 7 and 8, sections I and II of Ordinance No. 97.06 of 21 January 1997, concerning war materiel, weapons and ammunition, grants the State a monopoly for the acquisition, manufacture and import of several categories of weapons of war. The Ordinance stipulates that any person who violates its provisions is liable to punishment, except for those who have received a licence under the terms of an order signed, as the case may be, either by the Minister of Defence or the Minister of the Interior.

This exception is not granted to persons who have committed crimes or misdemeanours or who have been found guilty of trafficking in or illegally using psychotropic substances, breach of trust, violence and rebellion or criminal association.

The penalties imposed are proportional to the gravity of the crime. They range from terms of between 10 and 20 years' imprisonment and fines of between DA 1,000,000 and 5,000,000 (article 26) to the attachment and confiscation of moveable and immoveable property, premises and facilities that have been used, directly or indirectly, for the manufacture of materiel, weapons, ammunition and goods acquired by means of illegal trade (article 47), and even include the death penalty in cases of recidivism (article 48).

Executive Decree No. 98.96 of 18 March 1998, establishing the mode of enforcement of Ordinance No. 97.06 of 21 January 1997, regulates the use, import

or manufacture of various categories of firearms and specifies the conditions for granting licences to individuals and undertakings.

The issuance of a licence within the meaning of article 13 is denied if the application is filed by persons who have been sentenced by the courts or could threaten public order or the interests of the State. Licences may be revoked in the same circumstances. Under article 20 of the Decree, the Ministers of Defence and of the Interior may revoke a licence, if the holder is shown to have ceased to fulfil the requisite conditions or a breach thereof is discovered; the guilty party is sentenced to at least three months in prison.

Under the terms of article 22 of the Decree, licence holders must keep a special logbook, which the relevant authorities are entitled to consult. According to article 31, the Ministry of Defence must keep an inventory of all imports or exports of materiel, weapons and ammunition, and facilities and equipment must also be inspected regularly.

The procedure for obtaining licences to buy, import, hold or bear arms and the standard application forms pertaining thereto are established by an inter-ministerial order of 6 January 2001 issued by the Minister of Defence and the Minister of the Interior. Depending on the nature of the application, applicants are directed towards the competent territorial or central administrative authorities in order to obtain the licences which they require. An administrative file is required regardless of the type of application or the activity envisaged and an advice notice is given in each case.

VI. Conclusion

Algeria attaches great importance to the effective and rigorous implementation of the provisions of Security Council resolution 1390 (2002) and to the strengthening of measures for the prevention, surveillance and suppression of the financing of terrorism. Working mechanisms and support and coordination structures between all States are needed to give practical effect to that objective.

The strengthening of national legislation and regulations, the establishment of mechanisms for consultations, the exchange of information, follow-up, financial intelligence and the broadening of cooperation to include all aspects of the fight against terrorism and the financial networks of terrorist groups and organizations all form part of a global strategy to combat a perverse and criminal transnational scourge.

Algeria has been unstinting in its efforts to draw the international community's attention to the consequences arising from the facilities offered by the international banking system and permissive legislation for terrorist groups and organizations. The latter have used certain financial havens and offshore banks to promote and finance terrorism in Algeria.

The fact that States have become aware of the threat that terrorism poses to peace and to the stability of nations should motivate and encourage them to give further consideration to ways and means of overhauling the international financial system and instituting global cooperation aimed at eliminating the illegal practices and bank secrecy which the current system only fosters.

The Algerian banking system is not as permissive or as lax as the banking systems of developed countries. It follows that Algeria cannot be considered as a link in international networks for the financing of international terrorism. Indeed, no suspicious movements of funds have been detected in Algerian banks.

The prerogatives which the new Act accords to the Bank of Algeria by giving it the right to review all transactions carried out by national or foreign operators into or out of Algeria, are such as to grant that institution the tools it needs to meet its new obligations in this domain. Transfers must be carried out in accordance with specific procedures and the only assets or funds deposited with Algerian banks are those intended for investment in conformity with the exchange and credit laws.

The reforms under way in the banking sector and the establishment of the financial intelligence unit will help to strengthen the preventive capacities of the Algerian banking system.

The same controls are applied by the various security and customs authorities with respect to the transit and/or illegal stay of persons and the transit of goods. These procedures will be strengthened further in order to find and arrest the persons on the lists mentioned in Security Council resolution 1390 (2002), lists that have been supplemented to include all terrorist groups, including the Armed Islamic Group and the Salafist Proselytization and Combat Group.

With regard to the question concerning the sale and supply of arms, Algeria, whose regulations are extremely strict, since it suffers directly from the problem of terrorism itself, is a country that is a victim of arms transfers from abroad for terrorist activities in its territory.

This is why Algeria is convinced that determined cooperation between the competent national and international bodies in preventing and combating transnational terrorism and its networks and the consistent political commitment of States can contribute to the success of the global effort to eliminate this scourge once and for all.